General Assembly **Amendment**

February Session, 2004 LCO No. **4112**

HB0566904112HR0

Offered by:

REP. HAMZY, 78th Dist.
REP. BOUCHER, 143rd Dist.
REP. STONE, 134th Dist.
REP. CAFERO, 142nd Dist.
REP. ADINOLFI, 103rd Dist.
REP. BELDEN, 113th Dist.
REP. BIELAWA, 2nd Dist.
REP. CARSON, 108th Dist.
REP. CONGDON, 42nd Dist.
REP. D'AMELIO, 71st Dist.
REP. DICKMAN, 132nd Dist.
REP. FERRARI, 62nd Dist.
REP. FLOREN, 149th Dist.
REP. FREY, 111th Dist.
REP. GIBBONS, 150th Dist.
REP. HARKINS, 120th Dist.
REP. HETHERINGTON, 125th Dist.
REP. HOVEY, 112th Dist.
REP. KALINOWSKI, 100th Dist.
REP. MILLER, 122nd Dist.
REP. NOUJAIM, 74th Dist.
REP. PETERS, 30th Dist.
REP. POWERS, 151st Dist.
REP. SAWYER, 55th Dist.
REP. SCRIBNER, 107th Dist.
REP. STRIPP, 135th Dist.
REP. TYMNIAK, 133rd Dist.
REP. WILLIAMS, 68th Dist.
REP. WINKLER, 41st Dist.
REP. WITKOS, 17th Dist.
REP. BERNHARD, 136th Dist.
SEN. FREEDMAN, 26th Dist.
SEN. CAPPIELLO, 24th Dist.

To: Subst. House Bill No. **5669** File No. 504 Cal. No. 355

"AN ACT CONCERNING MEDICAL MALPRACTICE INSURANCE REFORM."

Strike everything after the enacting clause and substitute the following in lieu thereof:

"Section 1. Section 52-190a of the general statutes, as amended by section 14 of public act 03-202, is repealed and the following is substituted in lieu thereof (*Effective October 1, 2004, and applicable to actions filed on or after said date*):

(a) No civil action or apportionment complaint shall be filed to recover damages resulting from personal injury or wrongful death occurring on or after October 1, 1987, whether in tort or in contract, in which it is alleged that such injury or death resulted from the negligence of a health care provider, unless the attorney or party filing the action or apportionment complaint has made a reasonable inquiry as permitted by the circumstances to determine that there are grounds for a good faith belief that there has been negligence in the care or treatment of the claimant. The complaint**,** **[**or**]** initial pleading or apportionment complaint shall contain a certificate of the attorney or party filing the action or apportionment complaint that such reasonable inquiry gave rise to a good faith belief that grounds exist for an action against each named defendant or for an apportionment complaint against each named apportionment defendant. **[**For the purposes of this section, such good faith may be shown to exist if the claimant or his attorney has received a written opinion, which shall not be subject to discovery by any party except for questioning the validity of the certificate,**]** To show the existence of such good faith, the claimant or such claimant's attorney, and any apportionment complainant or such apportionment complainant's attorney, shall obtain a written and signed opinion of a similar health care provider, as defined in section 52-184c, which similar health care provider shall be selected pursuant to the provisions of said section, that there appears to be evidence of medical negligence and includes a detailed basis for the formation of such opinion. The similar health care provider who provides such written opinion shall not, without a showing of malice, be personally liable for any damages to the defendant health care provider by reason of having provided such written opinion. Such written opinion shall be subject to discovery upon the filing of such civil action. In addition to such written opinion,

the court may consider other factors with regard to the existence of good faith. If the court determines, after the completion of discovery, that such certificate was not made in good faith and that no justiciable issue was presented against a health care provider that fully cooperated in providing informal discovery, the court upon motion or upon its own initiative shall impose upon the person who signed such certificate or a represented party, or both, an appropriate sanction which may include an order to pay to the other party or parties the amount of the reasonable expenses incurred because of the filing of the pleading, motion or other paper, including a reasonable attorney's fee. The court may also submit the matter to the appropriate authority for disciplinary review of the attorney if the claimant's attorney or apportionment complainant's attorney submitted the certificate. Notwithstanding the provisions of subsection (a) of section 52-102b, an apportionment complaint filed under this subsection shall be filed not later than one year from the return date.

(b) If a claimant in a civil action asserts a claim against an apportionment defendant pursuant to subsection (d) of section 52-102b, the requirement under subsection (a) of this section that the attorney or party filing the action make a reasonable inquiry and submit a certificate of good faith shall be satisfied by the submission of a certificate of good faith by the apportionment complainant pursuant to subsection (a) of this section.

[(b)**]** (c) Upon petition to the clerk of the court where the action will be filed, an automatic ninety-day extension of the statute of limitations shall be granted to allow the reasonable inquiry required by subsection (a) of this section. This period shall be in addition to other tolling periods.

Sec. 2. (NEW) (*Effective July 1, 2004*) (a) The Chief Court Administrator shall establish pretrial screening panels for the purpose of identifying claims of negligence by health care providers and encouraging the early resolution of meritorious claims prior to the commencement of a civil action and the early withdrawal or dismissal

of nonmeritorious claims.

(b) The Chief Court Administrator shall maintain lists of health care providers and attorneys recommended by the professions involved to serve on such panels.

(c) Whenever a civil action is filed on or after October 1, 2004, to recover damages resulting from personal injury or wrongful death occurring, whether in tort or in contract, in which it is alleged that such injury or death was caused by the negligence of a health care provider, the clerk of the court shall notify the Chief Court Administrator. Unless the parties have agreed to bypass the pretrial screening process provided by this section and section 3 of this act, the Chief Court Administrator shall designate a judge trial referee as the chairperson of a panel to review the certificate of good faith filed with the complaint in such action pursuant to section 52-190a of the general statutes, as amended by this act. The judge trial referee shall select additional members for the panel from the lists maintained pursuant to subsection (b) of this section. Such members shall include an attorney and a health care provider. If the claim involves more than one health care provider accused of negligence, the judge trial referee may select another health care provider as a member of the panel. In lieu of a member selected from the lists maintained pursuant to subsection (b) of this section, if all parties agree, the judge trial referee may select a member who is not on such lists.

(d) The members of the panel, other than the chairperson, shall serve without compensation.

(e) If any member of a panel other than the chairperson is unable or unwilling to serve in any matter or is challenged for cause by any person who is a party to a proceeding before the panel, the party challenging the member shall request a replacement from the lists maintained by the Chief Court Administrator pursuant to subsection (b) of this section. The chairperson shall select a replacement and shall so notify the parties. Only challenges for cause shall be allowed. The

chairperson shall inquire as to any bias on the part of a member of a panel or as requested by any party.

(f) If the chairperson is challenged for cause by any person who is a party to the proceeding before a panel, the party making the challenge shall notify the Chief Court Administrator. If the Chief Court Administrator finds cause for the challenge, the Chief Court Administrator shall designate another judge trial referee to replace the chairperson.

(g) The applicable statute of limitations concerning an action for negligence against a health care provider shall be tolled from the date that the civil action is filed until thirty days after the date the claimant receives notice of the findings of the panel.

(h) The notice of claim and all other documents filed with the court in the case during the pretrial screening process shall be confidential.

Sec. 3. (NEW) (*Effective October 1, 2004*) (a) The panel selected and convened pursuant to section 2 of this act shall hold a hearing where all parties to the civil action may appear and make a presentation with respect to the sufficiency of the good faith certificate that has been filed with the complaint in such civil action. After presentation by the parties, the panel may request from any of the parties such additional facts, records or other information as it deems appropriate.

(b) Not later than thirty days after such hearing, the panel shall make a finding as to whether such certificate is persuasive or is not persuasive in demonstrating that there are grounds for a good faith belief that there has been negligence in the care or treatment of the claimant.

(c) If the panel finds, by a preponderance of the evidence, that such certificate is persuasive in demonstrating that there are grounds for a good faith belief that there has been negligence in the care or treatment of the claimant, it shall so notify the parties and the claimant may proceed with the prosecution of the civil action, provided such finding

shall not be admissible in such civil action.

(d) (1) If the panel finds, by a preponderance of the evidence, that such certificate is not persuasive in demonstrating that there are grounds for a good faith belief that there has been negligence in the care or treatment of the claimant, it shall so notify the parties and the claimant shall, not later than sixty days after such notice, (A) submit another good faith certificate to such panel, or (B) request the Chief Court Administrator to designate a different judge trial referee to select and convene a different panel pursuant to section 2 of this act and submit a second good faith certificate to such different panel for review. Failure of the plaintiff to submit a second good faith certificate to either the original panel or different panel under this subsection shall be cause for the dismissal of the plaintiff's civil action.

(2) If, upon review of a second good faith certificate submitted pursuant to subdivision (1) of this subsection, the panel finds, by a preponderance of the evidence, that such second good faith certificate is also not persuasive in demonstrating that there are grounds for a good faith belief that there has been negligence in the care or treatment of the claimant, it shall so notify the parties and the claimant may proceed with the prosecution of the civil action, provided both the finding by the panel under subdivision (1) of this subsection and the finding by the panel under this subdivision shall be admissible in such civil action.

(3) If, upon review of a second good faith certificate submitted pursuant to subdivision (1) of this subsection, the panel finds, by a preponderance of the evidence, that such second good faith certificate is persuasive in demonstrating that there are grounds for a good faith belief that there has been negligence in the care or treatment of the claimant, it shall so notify the parties and the claimant may proceed with the prosecution of the civil action, provided such finding shall not be admissible in such civil action.

Sec. 4. Section 52-192a of the general statutes is repealed and the

following is substituted in lieu thereof *(Effective October 1, 2004)*:

(a) After commencement of any civil action based upon contract or seeking the recovery of money damages, whether or not other relief is sought, the plaintiff may, not later than thirty days before trial, file with the clerk of the court a written "offer of judgment" signed by the plaintiff or the plaintiff's attorney, directed to the defendant or the defendant's attorney, offering to settle the claim underlying the action and to stipulate to a judgment for a sum certain. The plaintiff shall give notice of the offer of settlement to the defendant's attorney or, if the defendant is not represented by an attorney, to the defendant himself or herself. Within sixty days after being notified of the filing of the "offer of judgment" or within any extension or extensions thereof, not to exceed a total of one hundred twenty additional days, which shall be granted by the court upon the request of the defendant or the defendant's attorney, and prior to the rendering of a verdict by the jury or an award by the court, the defendant or the defendant's attorney may file with the clerk of the court a written "acceptance of offer of judgment" agreeing to a stipulation for judgment as contained in plaintiff's "offer of judgment". Upon such filing, the clerk shall enter judgment immediately on the stipulation. If the "offer of judgment" is not accepted within **[**sixty days**]** the sixty-day period or any extension thereof, and prior to the rendering of a verdict by the jury or an award by the court, the "offer of judgment" shall be considered rejected and not subject to acceptance unless refiled. Any such "offer of judgment" and any "acceptance of offer of judgment" shall be included by the clerk in the record of the case.

(b) After trial the court shall examine the record to determine whether the plaintiff made an "offer of judgment" which the defendant failed to accept. **[**If**]** Except with respect to a civil action described in subsection (c) of this section, if the court ascertains from the record that the plaintiff has recovered an amount equal to or greater than the sum certain stated in the plaintiff's "offer of judgment", the court shall add to the amount so recovered twelve per cent annual interest on said amount. **[**, computed from the date such offer was filed in actions

commenced before October 1, 1981. In those actions commenced on or after October 1, 1981, the**]**

(c) With respect to any civil action filed on or after October 1, 2004, to recover damages resulting from personal injury or wrongful death, whether in tort or in contract, in which it is alleged that such injury or death resulted from the negligence of a health care provider, as defined in section 52-184b, and where the cause of action accrued on or after the effective date of this section, if the court ascertains from the record that the plaintiff has recovered an amount equal to or greater than the sum certain stated in the plaintiff's offer of judgment, the court shall add to the amount so recovered interest at an annual rate of three percentage points above the weekly average five-year constant maturity yield of United States securities, as published by the Board of Governors of the Federal Reserve System for the week in which the offer of judgment was filed. Such interest shall be in addition to the amount of the recoverable economic and noneconomic damages awarded pursuant to section 52-572h, as amended by this act and the total amount of recoverable noneconomic damages awarded under said section and the interest added to such recoverable noneconomic damages pursuant to this section may exceed the limit set forth in subdivision (1) or (2), as the case may be, of subsection (p) of said section.

(d) The interest shall be computed from the date the complaint in the civil action was filed with the court if the "offer of judgment" was filed not later than eighteen months from the filing of such complaint. If such offer was filed later than eighteen months from the date of filing of the complaint, the interest shall be computed from the date the "offer of judgment" was filed. The court may award reasonable attorney's fees in an amount not to exceed three hundred fifty dollars, and shall render judgment accordingly. This section shall not be interpreted to abrogate the contractual rights of any party concerning the recovery of attorney's fees in accordance with the provisions of any written contract between the parties to the action.

Sec. 5. Section 52-251c of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2004, and applicable to contingency fee arrangements entered into on or after said date*):

(a) In any claim or civil action to recover damages resulting from personal injury, wrongful death or damage to property occurring on or after October 1, 1987, the attorney and the claimant may provide by contract, which contract shall comply with all applicable provisions of the rules of professional conduct governing attorneys adopted by the judges of the Superior Court, that the fee for the attorney shall be paid contingent upon, and as a percentage of: (1) Damages awarded and received by the claimant; or (2) settlement amount pursuant to a settlement agreement.

(b) In any such contingency fee arrangement such fee shall be the exclusive method for payment of the attorney by the claimant and shall not exceed an amount equal to a percentage of the damages awarded and received by the claimant or of the settlement amount received by the claimant as follows: (1) Thirty-three and one-third per cent of the first three hundred thousand dollars; (2) twenty-five per cent of the next three hundred thousand dollars; (3) twenty per cent of the next three hundred thousand dollars; (4) fifteen per cent of the next three hundred thousand dollars; and (5) ten per cent of any amount which exceeds one million two hundred thousand dollars.

(c) Whenever a claimant in a medical malpractice case enters into a contingency fee arrangement with an attorney which provides for a fee that would exceed the percentage limitations set forth in subsection (b) of this section, such arrangement shall not be valid unless the claimant's attorney files an application with the court for approval of such arrangement and the court, for good cause shown, grants such application. The filing of such application shall toll the applicable statute of limitations until thirty days after the court's decision to grant or deny the application.

[(c)**]** (d) For the purposes of this section, "damages awarded and

received" means in a civil action in which final judgment is entered, that amount of the judgment or amended judgment entered by the court that is received by the claimant **[**, except that in a civil action brought pursuant to section 38a-368 such amount shall be reduced by any basic reparations benefits paid to the claimant pursuant to section 38a-365;**]** after deduction for any disbursements made or costs incurred by the attorney in connection with the investigation and prosecution or settlement of the civil action, other than ordinary office overhead and expense, for which the claimant is liable; and "settlement amount received" means in a claim or civil action in which no final judgment is entered, the amount received by the claimant pursuant to a settlement agreement **[**, except that in a claim or civil action brought pursuant to section 38a-368 such amount shall be reduced by any basic reparations benefits paid to the claimant pursuant to section 38a-365; and "fee" shall not include disbursements or costs incurred in connection with the prosecution or settlement of the claim or civil action, other than ordinary office overhead and expense**]** after deduction for any disbursements made or costs incurred by the attorney in connection with the investigation and prosecution or settlement of the claim or civil action, other than ordinary office overhead and expense, for which the claimant is liable.

Sec. 6. Section 38a-676 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2004*):

(a) With respect to rates pertaining to commercial risk insurance, and subject to the provisions of subsection (b) of this section with respect to professional liability insurance described in subsection (b) of this section and workers' compensation and employers' liability insurance, on or before the effective date **[**thereof, every**]** of such rates, each admitted insurer shall submit to the Insurance Commissioner for the commissioner's information, except as to inland marine risks which by general custom of the business are not written according to manual rates or rating plans, **[**every**]** each manual of classifications, rules and rates, and **[**every**]** each minimum, class rate, rating plan, rating

schedule and rating system and any modification of the foregoing which it uses. Such submission by a licensed rating organization of which an insurer is a member or subscriber shall be sufficient compliance with this section for any insurer maintaining membership or subscribership in such organization, to the extent that the insurer uses the manuals, minimums, class rates, rating plans, rating schedules, rating systems, policy or bond forms of such organization. The information shall be open to public inspection after its submission.

(b) (1) Each filing as described in subsection (a) of this section for workers' compensation or employers' liability insurance shall be on file with the Insurance Commissioner for a waiting period of thirty days before it becomes effective, which period may be extended by the commissioner for an additional period not to exceed thirty days if the commissioner gives written notice within such waiting period to the insurer or rating organization which made the filing that the commissioner needs such additional time for the consideration of such filing. Upon written application by such insurer or rating organization, the commissioner may authorize a filing which the commissioner has reviewed to become effective before the expiration of the waiting period or any extension thereof. A filing shall be deemed to meet the requirements of sections 38a-663 to 38a-696, inclusive, unless disapproved by the commissioner within the waiting period or any extension thereof. If, within the waiting period or any extension thereof, the commissioner finds that a filing does not meet the requirements of said sections, the commissioner shall send to the insurer or rating organization which made such filing written notice of disapproval of such filing, specifying therein in what respects the commissioner finds such filing fails to meet the requirements of said sections and stating that such filing shall not become effective. Such finding of the commissioner shall be subject to review as provided in section 38a-19.

(2) Each filing as described in subsection (a) of this section for professional liability insurance for physicians and surgeons, hospitals or advanced practice registered nurses shall be subject to prior rate

approval in accordance with this section. On and after October 1, 2004, each insurer or rating organization seeking to change its rates for such insurance shall file with the commissioner rates and supplementary rate information and such supporting information as is required by the commissioner. Such rates and supplementary rate information and supporting information required by the commissioner shall be on file with the commissioner for a waiting period of thirty days before it becomes effective, which period may be extended by the commissioner for an additional period not to exceed thirty days if the commissioner gives written notice within such waiting period to the insurer or rating organization which made the filing that the commissioner needs such additional time for the consideration of such filing. Upon written application by such insurer or rating organization, the commissioner may authorize a filing which the commissioner has reviewed to become effective before the expiration of the waiting period or any extension thereof. A filing shall be deemed to meet the requirements of sections 38a-663 to 38a-696, inclusive, unless disapproved by the commissioner within the waiting period or any extension thereof. If, within the waiting period or any extension thereof, the commissioner finds that a filing does not meet the requirements of sections 38a-663 to 38a-696, inclusive, the commissioner shall send to the insurer or rating organization which made such filing written notice of disapproval of such filing, specifying in what respects the commissioner finds such filing fails to meet the requirements of sections 38a-663 to 38a-696, inclusive, and stating that such filing shall not become effective. Such finding of the commissioner shall be subject to review as provided in section 38a-19.

(c) The form of any insurance policy or contract the rates for which are subject to the provisions of sections 38a-663 to 38a-696, inclusive, other than fidelity, surety or guaranty bonds, and the form of any endorsement modifying such insurance policy or contract, shall be filed with the Insurance Commissioner prior to its issuance. The commissioner shall adopt regulations, in accordance with the provisions of chapter 54, establishing a procedure for review of such

policy or contract. If at any time the commissioner finds that any such policy, contract or endorsement is not in accordance with such provisions or any other provision of law, the commissioner shall issue an order disapproving the issuance of such form and stating the reasons for disapproval. The provisions of section 38a-19 shall apply to any such order issued by the commissioner.

Sec. 7. Section 19a-17a of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2004*):

Upon entry of any medical malpractice award or upon entering a settlement of a malpractice claim against an individual licensed pursuant to chapter 370 to 373, inclusive, 379 or 383, the entity making payment on behalf of a party or, if no such entity exists, the party, shall notify the Department of Public Health and the Insurance Commissioner of the terms of the award or settlement and shall provide to the department and the Insurance Commissioner a copy of the award or settlement and the underlying complaint and answer, if any. The department shall review all medical malpractice awards and all settlements to determine whether further investigation or disciplinary action against the providers involved is warranted. Any document received pursuant to this section shall be maintained as confidential by the Insurance Commissioner, and with respect to the department, shall not be considered a petition and shall not be subject to the provisions of section 1-210, as amended, unless the department determines, following completion of its review, that further investigation or disciplinary action is warranted.

Sec. 8. Section 52-572h of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2004, and applicable to actions filed on and after said date*):

(a) For the purposes of this section: (1) "Economic damages" means compensation determined by the trier of fact for pecuniary losses including, but not limited to, the cost of reasonable and necessary medical care, rehabilitative services, custodial care and loss of earnings

or earning capacity excluding any noneconomic damages; (2) "noneconomic damages" means compensation determined by the trier of fact for all nonpecuniary losses including, but not limited to, physical pain and suffering and mental and emotional suffering; (3) "recoverable economic damages" means the economic damages reduced by any applicable findings including but not limited to set-offs, credits, comparative negligence, additur and remittitur, and any reduction provided by section 52-225a; (4) "recoverable noneconomic damages" means the noneconomic damages reduced by any applicable findings including but not limited to set-offs, credits, comparative negligence, additur and remittitur; (5) "health care institution" means a health care institution licensed pursuant to chapter 368v; and (6) "health care provider" means an individual provider of health care licensed pursuant to chapters 370 to 373, inclusive, 375 to 383c, inclusive, or chapter 400j.

(b) In causes of action based on negligence, contributory negligence shall not bar recovery in an action by any person or the person's legal representative to recover damages resulting from personal injury, wrongful death or damage to property if the negligence was not greater than the combined negligence of the person or persons against whom recovery is sought including settled or released persons under subsection (n) of this section. The economic or noneconomic damages allowed shall be diminished in the proportion of the percentage of negligence attributable to the person recovering which percentage shall be determined pursuant to subsection (f) of this section.

(c) In a negligence action to recover damages resulting from personal injury, wrongful death or damage to property occurring on or after October 1, 1987, if the damages are determined to be proximately caused by the negligence of more than one party, each party against whom recovery is allowed shall be liable to the claimant only for such party's proportionate share of the recoverable economic damages and the recoverable noneconomic damages except as provided in subsection (g) of this section.

(d) The proportionate share of damages for which each party is liable is calculated by multiplying the recoverable economic damages and the recoverable noneconomic damages by a fraction in which the numerator is the party's percentage of negligence, which percentage shall be determined pursuant to subsection (f) of this section, and the denominator is the total of the percentages of negligence, which percentages shall be determined pursuant to subsection (f) of this section, to be attributable to all parties whose negligent actions were a proximate cause of the injury, death or damage to property including settled or released persons under subsection (n) of this section. Any percentage of negligence attributable to the claimant shall not be included in the denominator of the fraction.

(e) In any action to which this section is applicable, the instructions to the jury given by the court shall include an explanation of the effect on awards and liabilities of the percentage of negligence found by the jury to be attributable to each party.

(f) The jury or, if there is no jury, the court shall specify: (1) The amount of economic damages; (2) the amount of noneconomic damages; (3) any findings of fact necessary for the court to specify recoverable economic damages and recoverable noneconomic damages; (4) the percentage of negligence that proximately caused the injury, death or damage to property in relation to one hundred per cent, that is attributable to each party whose negligent actions were a proximate cause of the injury, death or damage to property including settled or released persons under subsection (n) of this section; and (5) the percentage of such negligence attributable to the claimant.

(g) (1) Upon motion by the claimant to open the judgment filed, after good faith efforts by the claimant to collect from a liable defendant, not later than one year after judgment becomes final through lapse of time or through exhaustion of appeal, whichever occurs later, the court shall determine whether all or part of a defendant's proportionate share of the recoverable economic damages and recoverable noneconomic damages is uncollectible from that

party, and shall reallocate such uncollectible amount among the other defendants in accordance with the provisions of this subsection. (2) The court shall order that the portion of such uncollectible amount which represents recoverable noneconomic damages be reallocated among the other defendants according to their percentages of negligence, provided that the court shall not reallocate to any such defendant an amount greater than that defendant's percentage of negligence multiplied by such uncollectible amount. (3) The court shall order that the portion of such uncollectible amount which represents recoverable economic damages be reallocated among the other defendants. The court shall reallocate to any such other defendant an amount equal to such uncollectible amount of recoverable economic damages multiplied by a fraction in which the numerator is such defendant's percentage of negligence and the denominator is the total of the percentages of negligence of all defendants, excluding any defendant whose liability is being reallocated. (4) The defendant whose liability is reallocated is nonetheless subject to contribution pursuant to subsection (h) of this section and to any continuing liability to the claimant on the judgment.

(h) (1) A right of contribution exists in parties who, pursuant to subsection (g) of this section are required to pay more than their proportionate share of such judgment. The total recovery by a party seeking contribution shall be limited to the amount paid by such party in excess of such party's proportionate share of such judgment.

(2) An action for contribution shall be brought within two years after the party seeking contribution has made the final payment in excess of such party's proportionate share of the claim.

(i) This section shall not limit or impair any right of subrogation arising from any other relationship.

(j) This section shall not impair any right to indemnity under existing law. Where one tortfeasor is entitled to indemnity from another, the right of the indemnitee is for indemnity and not

contribution, and the indemnitor is not entitled to contribution from the indemnitee for any portion of such indemnity obligation.

(k) This section shall not apply to breaches of trust or of other fiduciary obligation.

(l) The legal doctrines of last clear chance and assumption of risk in actions to which this section is applicable are abolished.

(m) The family car doctrine shall not be applied to impute contributory or comparative negligence pursuant to this section to the owner of any motor vehicle or motor boat.

(n) A release, settlement or similar agreement entered into by a claimant and a person discharges that person from all liability for contribution, but it does not discharge any other persons liable upon the same claim unless it so provides. However, the total award of damages is reduced by the amount of the released person's percentage of negligence determined in accordance with subsection (f) of this section.

(o) Except as provided in subsection (b) of this section, there shall be no apportionment of liability or damages between parties liable for negligence and parties liable on any basis other than negligence including, but not limited to, intentional, wanton or reckless misconduct, strict liability or liability pursuant to any cause of action created by statute, except that liability may be apportioned among parties liable for negligence in any cause of action created by statute based on negligence including, but not limited to, an action for wrongful death pursuant to section 52-555 or an action for injuries caused by a motor vehicle owned by the state pursuant to section 52-556.

(p) In any action filed on or after October 1, 2004, to recover damages resulting from personal injury or wrongful death, whether in tort or in contract, in which it is alleged that such injury or death resulted from the professional negligence of a health care provider or a

health care institution, or both, in the medical diagnosis, care or treatment of the claimant:

(1) If one or more health care providers are defendants in such action, the amount of recoverable noneconomic damages allowed each claimant shall not exceed three hundred fifty thousand dollars with respect to each defendant health care provider, except that (A) if two or more defendant health care providers are trained and experienced in the same specialty, discipline or school of practice, the amount of recoverable noneconomic damages allowed each claimant shall not exceed three hundred fifty thousand dollars in the aggregate with respect to such defendant health care providers, regardless of the number of such defendant health care providers, or (B) if the conduct of a defendant health care provider is found by the trier of fact to constitute gross, wilful or wanton negligence, the amount of recoverable noneconomic damages allowed each claimant with respect to such defendant health care provider shall not exceed one million fifty thousand dollars;

(2) If one or more health care institutions are defendants in such action, the amount of recoverable noneconomic damages allowed each claimant shall not exceed six hundred fifty thousand dollars with respect to each defendant health care institution, except that if the conduct of a defendant health care institution is found by the trier of fact to constitute gross, wilful or wanton negligence, the amount of recoverable noneconomic damages allowed each claimant with respect to such defendant health care institution shall not exceed one million nine hundred fifty thousand dollars;

(3) An award or combination of awards in excess of the limitations set forth in subdivisions (1) and (2) of this subsection shall be reduced to the applicable limits by the court. The limits in subdivisions (1) and (2) of this subsection shall not be disclosed to a jury;

(4) The Chief Court Administrator shall adjust the amount of recoverable noneconomic damages set forth in subdivisions (1) and (2)

of this subsection annually on February first to reflect the percentage increase, if any, in the most recent calendar year average in the consumer price index for urban consumers over the average for the previous calendar year.

Sec. 9. Section 20-13b of the general statutes is repealed and the following is substituted in lieu thereof (*Effective from passage*):

The Commissioner of Public Health, with advice and assistance from the board, may establish such regulations in accordance with chapter 54 as may be necessary to carry out the provisions of sections 20-13a to 20-13i, inclusive, as amended by this act. On or before July 1, 2004, such regulations shall include, but need not be limited to: (1) Guidelines for screening complaints received to determine which complaints will be investigated; (2) guidelines to provide a basis for prioritizing the order in which complaints will be investigated; (3) a system for conducting investigations to ensure prompt action when it appears necessary; (4) guidelines to determine when an investigation should be broadened beyond the initial complaint to include sampling patient records to identify patterns of care, reviewing office practices and procedures, reviewing performance and discharge data from hospitals and managed care organizations and conducting additional interviews of patients; and (5) guidelines to protect and ensure the confidentiality of patient and provider identifiable information when an investigation is broadened beyond the initial complaint.

Sec. 10. Section 20-8a of the general statutes is repealed and the following is substituted in lieu thereof (*Effective from passage*):

(a) There shall be within the Department of Public Health a Connecticut Medical Examining Board. Said board shall consist of fifteen members appointed by the Governor, subject to the provisions of section 4-9a, as amended, in the manner prescribed for department heads in section 4-7, as follows: Five physicians practicing in the state; one physician who shall be a full-time member of the faculty of The University of Connecticut School of Medicine; one physician who shall

be a full-time chief of staff in a general-care hospital in the state; one physician who shall be registered as a supervising physician for one or more physician assistants; one physician who shall be a graduate of a medical education program accredited by the American Osteopathic Association; one physician assistant licensed pursuant to section 20-12b and practicing in this state; and five public members. No professional member of said board shall be an elected or appointed officer of a professional society or association relating to such member's profession at the time of appointment to the board or have been such an officer during the year immediately preceding appointment or serve for more than two consecutive terms. Professional members shall be practitioners in good professional standing and residents of this state.

(b) All vacancies shall be filled by the Governor in the manner prescribed for department heads in section 4-7. Successors and appointments to fill a vacancy shall fulfill the same qualifications as the member succeeded or replaced. In addition to the requirements in sections 4-9a, as amended, and 19a-8, no person whose spouse, parent, brother, sister, child or spouse of a child is a physician, as defined in section 20-13a, or a physician assistant, as defined in section 20-12a, shall be appointed as a public member.

(c) The Commissioner of Public Health shall establish a list of eighteen persons who may serve as members of medical hearing panels established pursuant to **[**subsection (g) of**]** this section. Persons appointed to the list shall serve as members of the medical hearing panels and provide the same services as members of the Connecticut Medical Examining Board. Members from the list serving on such panels shall not be voting members of the Connecticut Medical Examining Board. The list shall consist of eighteen members appointed by the commissioner, eight of whom shall be physicians, as defined in section 20-13a, with at least one of such physicians being a graduate of a medical education program accredited by the American Osteopathic Association, one of whom shall be a physician assistant licensed pursuant to section 20-12b, and nine of whom shall be members of the

public. No professional member of the list shall be an elected or appointed officer of a professional society or association relating to such member's profession at the time of appointment to the list or have been such an officer during the year immediately preceding such appointment to the list. A licensed professional appointed to the list shall be a practitioner in good professional standing and a resident of this state. All vacancies shall be filled by the commissioner. Successors and appointments to fill a vacancy on the list shall possess the same qualifications as those required of the member succeeded or replaced. No person whose spouse, parent, brother, sister, child or spouse of a child is a physician, as defined in section 20-13a, or a physician assistant, as defined in section 20-12a, shall be appointed to the list as a member of the public. Each person appointed to the list shall serve without compensation at the pleasure of the commissioner. Each medical hearing panel shall consist of three members, one of whom shall be a physician who is a similar health care provider, as defined in section 52-184c, to the physician who is the subject of the complaint, and two of whom shall be public members. At least one of the three members shall be a member of the Connecticut Medical Examining Board. The public members may be a member of the board or a member from the list established pursuant to this subsection.

(d) The office of the board shall be in Hartford, in facilities to be provided by the department.

(e) The board shall adopt and may amend a seal.

(f) The Governor shall appoint a chairperson from among the board members. Said board shall meet at least once during each calendar quarter and at such other times as the chairperson deems necessary. Special meetings shall be held on the request of a majority of the board after notice in accordance with the provisions of section 1-225. A majority of the members of the board shall constitute a quorum. Members shall not be compensated for their services. Any member who fails to attend three consecutive meetings or who fails to attend fifty per cent of all meetings held during any calendar year shall be

deemed to have resigned from office. Minutes of all meetings shall be recorded by the board. No member shall participate in the affairs of the board during the pendency of any disciplinary proceedings by the board against such member. Said board shall (1) hear and decide matters concerning suspension or revocation of licensure, (2) adjudicate complaints against practitioners, and (3) impose sanctions where appropriate.

(g) (1) Not later than December 31, 2004, the board, with the assistance of the department, shall adopt regulations, in accordance with chapter 54, to establish guidelines for use in the disciplinary process. Such guidelines shall include, but need not be limited to: (A) Identification of each type of violation; (B) a range of penalties for each type of violation; (C) additional optional conditions that may be imposed by the board for each violation; (D) identification of factors the board shall consider in determining what penalty should apply; (E) conditions, such as mitigating factors or other facts, that may be considered in allowing deviations from the guidelines; and (F) a provision that when a deviation from the guidelines occurs, the reason for the deviation shall be identified.

(2) The board shall refer all statements of charges filed with the board by the department pursuant to section 20-13e, as amended by this act, to a medical hearing panel **[**within**]** not later than sixty days **[**of**]** after the receipt of charges. **[**This**]** The time period may be extended for good cause by the board in a duly recorded vote. **[**The panel shall consist of three members, at least one of whom shall be a member of the board and one a member of the public. The public member may be a member of either the board or of the list established pursuant to subsection (c) of this section.**]** The panel shall conduct a hearing, in accordance with the provisions of chapter 54, and the regulations **[**established**]** adopted by the Commissioner of Public Health concerning contested cases, except that the panel shall file a proposed final decision with the board **[**within**]** not later than one hundred twenty days **[**of**]** after the receipt of the issuance of the notice of hearing by the board. The time period for filing such proposed final

decision with the board may be extended for good cause by the board in a duly recorded vote. If the panel does not conduct a hearing within sixty days of the date of referral of the statement of charges by the board, the commissioner shall conduct a hearing in accordance with chapter 54 and the regulations adopted by the commissioner concerning contested cases. The commissioner shall file a proposed final decision with the board not later than sixty days after such hearing, except that the time period for filing such proposed final decision with the board may be extended for good cause by the board in a duly recorded vote.

(h) The board shall review the panel's proposed final decision in accordance with the provisions of section 4-179, and adopt, modify or remand said decision for further review or for the taking of additional evidence. The board shall act on the proposed final decision within ninety days of the filing of said decision by the panel. **[**This**]** The time period may be extended by the board for good cause in a duly recorded vote.

(i) Except in a case in which a license has been summarily suspended, pursuant to subsection (c) of section 19a-17 or subsection (c) of section 4-182, all three panel members shall be present to hear any evidence and vote on a proposed final decision. The chairperson of the Medical Examining Board may exempt a member from a meeting of the panel if the chairperson finds that good cause exists for such an exemption. Such an exemption may be granted orally but shall be reduced to writing and included as part of the record of the panel within two business days of the granting of the exemption or the opening of the record and shall state the reason for the exemption. Such exemption shall be granted to a member no more than once during any contested case and shall not be granted for a meeting at which the panel is acting on a proposed final decision on a statement of charges. The board may appoint a member to the panel to replace any member who resigns or otherwise fails to continue to serve on the panel. Such replacement member shall review the record prior to the next hearing.

(j) A determination of good cause shall not be reviewable and shall not constitute a basis for appeal of the decision of the board pursuant to section 4-183.

Sec. 11. Section 20-13i of the general statutes is repealed and the following is substituted in lieu thereof (*Effective from passage*):

The department shall file with the Governor and the joint standing committee on public health of the General Assembly on or before January 1, 1986, and thereafter on or before January first of each succeeding year, a report of the activities of the department and the board conducted pursuant to sections 20-13d and 20-13e, as amended by this act. Each such report shall include, but shall not be limited to, the following information: The number of petitions received; the number of petitions not investigated, and the reasons why; the number of hearings held on such petitions; **[**and**,]** the outcome of such hearings; the timeliness of action taken on any petition considered to be a priority; without identifying the particular physician concerned, a brief description of the impairment alleged in each such petition and the actions taken with regard to each such petition by the department and the board; the number of notifications received pursuant to section 19a-17a, as amended by this act; the number of such notifications with no further action taken, and the reasons why; and the outcomes for notifications where further action is taken.

Sec. 12. (NEW) (*Effective from passage*) The Department of Public Health shall adopt regulations, in accordance with the provisions of chapter 54, to establish protocols to be used by hospitals and outpatient surgical facilities when screening patients prior to any surgery. Such protocols shall require that: (1) Prior to any surgery the principal surgeon and two other persons employed by or associated with the hospital or facility (A) identify the patient and, if the patient is able to do so, have the patient identify himself or herself, and (B) identify the procedure to be performed, and (2) no patient may be anesthetized and no surgery may be performed unless the identifications specified in subdivision (1) of this section have been

confirmed by all such persons, except that such protocols may provide for alternative identification procedures in urgent or emergency circumstances or where the patient is nonspeaking, comatose or incompetent or is a child. Each hospital or outpatient surgical facility shall annually submit to the Department of Public Health a report on the implementation of such protocols. For the purposes of this section, "surgery" means an invasive procedure with incision upon the body or parts thereof under general or local anesthesia, utilizing surgical instruments for the purpose of diagnosis or treatment of a medical condition."

This act shall take effect as follows:	
Section 1	*October 1, 2004, and applicable to actions filed on or after said date*
Sec. 2	*July 1, 2004*
Sec. 3	*October 1, 2004*
Sec. 4	*October 1, 2004*
Sec. 5	*October 1, 2004, and applicable to contingency fee arrangements entered into on or after said date*
Sec. 6	*October 1, 2004*
Sec. 7	*October 1, 2004*
Sec. 8	*October 1, 2004, and applicable to actions filed on and after said date*
Sec. 9	*from passage*
Sec. 10	*from passage*
Sec. 11	*from passage*
Sec. 12	*from passage*